



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

REQUEST FOR APPLICATIONS (RFA)

RFA NO. SOLAR2021

NOTE: *If you download this RFA from the Department of Commerce website, you are responsible for sending your name, address, e-mail address, and telephone number to the RFA Coordinator in order for your organization to receive any RFA amendments or bidder questions/agency answers.*

PROGRAM NAME: Energy Retrofits for Public Buildings – Solar

APPLICATION DUE: August 19, 2021 at 4pm, Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: January 2022 – June 2024

APPLICANT ELIGIBILITY: This procurement is open to those Applicants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR APPLICATIONS:

1. Introduction
2. General Information for Applicants
3. Application Contents
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5. Exhibits
 - A. Certifications and Assurances
 - B. Diverse Business Inclusion Plan
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 - D. Service Contract with General Terms and Conditions

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1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Request for Applications (RFA) to solicit applications from eligible entities to fund installations of solar retrofits for eligible public buildings.

The Washington State Legislature created the program to provide solely for grants to be awarded in competitive rounds to local agencies, public higher education institutions, school districts, federally-recognized Tribal governments, and state agencies for projects that involve the purchase and installation of solar energy systems, including solar modules and inverters, with a preference for products manufactured in Washington.

COMMERCE intends to award one or multiple contract(s) to provide the services described in this RFA.

1.2 OBJECTIVES AND SCOPE OF WORK

The primary purpose of grants funded under this solicitation must be to install net-metered solar photovoltaic (PV) systems connected to publicly-owned facilities, which result in cost savings for a public entity from onsite energy production.

To align with state and local policy goals, COMMERCE is prioritizing projects that meet the following criteria:

- Projects with shorter simple payback period
- Projects that provide more funding from non-state sources, above the minimum requirements
- Applicant has not received funding for solar from this program previously
- Projects that use modules and inverters manufactured in Washington. *Note: Commerce's ability to prioritize these projects may be affected by further review by the World Trade Organization.*¹
- Projects with lower cost per watt

These goals are reflected in the scoring criteria. A project is still eligible to apply to this grant if it does not intend to or is unable to accomplish one or all of these policy goals.

All project costs must be necessary for and directly connected to the acquisition and installation of the solar array.

Examples of **eligible**, reimbursable expenditures include:

- Solar technology and construction materials
- Solar electrical connectivity, inverters, etc.
- Personnel costs for site design, site preparation and installation

Examples of **ineligible**, non-reimbursable expenditures include:

- Purchase or rental of real estate
- Construction or general maintenance of buildings and parking facilities
- New paving and landscaping
- Maintenance costs
- Studies or research
- Surveys
- Batteries or other energy storage infrastructure

¹ See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm

1.3 MINIMUM QUALIFICATIONS

Applicant qualifications:

- Applicants must be public entities in the state of Washington, such as:
 - Local agencies, including any city, town, county, special district, municipal corporation, agency, port district or authority, political subdivision of any type or any other entity or authority of local government in corporate form or otherwise.
 - Public higher education institutions
 - K-12 public school districts
 - State agencies
 - Federally-recognized Tribal governments
- Applicants must be in good standing with all applicable federal, state, and local laws and requirements, including with the Department of Commerce.
- Applicants must be responsive to communications from Commerce. Failure to reply by specified deadlines may result in elimination.
- Applicants may submit unlimited qualifying applications.

Project Qualifications:

- The project must be located at an existing facility owned by an eligible applicant and located in Washington State. An existing facility is defined as a building or facility that has a certificate of occupancy issued by the application deadline.
- A project is defined as a solar electric system installed at a single location and either interconnected with a single meter or installed on a single building. Each project must be submitted on a separate application.
- Projects may not replace an existing solar electric system.
- Projects are proposed to be net-metered with the serving electrical utility.
- The maximum project size is 100kW AC. The minimum project size is 20kW AC, or 10kW AC for Small Cities and Towns and Tribal Governments.
- Projects must include energy production monitoring capabilities
- Projects must have a simple payback of less than 50 years, using a statewide average electricity rate of \$0.08275
- Projects located in Small Cities and Towns (see definition) or projects of Tribal Governments must provide 33% of the total project cost (leverage ratio of 1:2) from other, non-state sources. All others must provide 50% of the total project cost (leverage ratio of 1:1) from other, non-state sources. Total project cost for this purpose excludes any contingency funds.

Application requirements:

- Applications must be submitted through the process determined by Commerce.
- Applications must be received by the due date specified by Commerce.
- All application materials must be submitted in the format required by Commerce.
- Answers and attachments must not exceed the length specified in the RFA or in the application instructions.
- Content that exceeds the length limitations will not be considered.
- Applications must include:
 - All materials and information listed in the application instructions
 - A complete and accurate application
 - A completed and signed Certification of Organization Official
 - Sufficient information to verify that the production estimates are accurate.

1.4 FUNDING

There is currently \$3,465,810 in funding available from the Energy Retrofits for Public Buildings program (formerly called Energy Efficiency and Solar Grants) as authorized in the Enacted 2020 supplemental budget ESSB 6248 Section 1023. This amount reflects the deduction of the 3% administrative costs as approved by the Office of Financial Management.

Additional funds may be available through other sources including but not limited to:

- State funds available from previous grant rounds
- Future funding authorized by the legislature
- Future federal funding distributed to Department of Commerce

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFA. The maximum award is \$350,000 per applicant. There is no minimum award amount.

Applications exceeding the maximum allowable award will be considered non-responsive and will not be evaluated. If an applicant submits multiple applications that total more than the maximum allowable award, each application will be considered separately, and if awarded, the applicant will be offered no more than the maximum allowable award amount across applications.

Projects located in Small Cities and Towns (see definition) or projects of Tribal governments must provide 33% of the total project cost (leverage ratio of 1:2) from other, non-state sources. All others must provide 50% of the total project cost (leverage ratio of 1:1) from other, non-state sources. Total project cost for this purpose excludes any contingency funds.

Funds that are from a federal source will have additional requirements.

This funding cannot supplant or replace funds already committed to the project. Commerce will not fund projects beyond 100%.

Any contract awarded as a result of this competitive process is contingent upon no successful process protests. Any contract awarded as a result of this procurement is contingent upon the availability of funding.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about January 2022 and to end prior to June 2024. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE.

The period of performance includes up to 18 months for construction and a minimum of 12 months Measurement and Verification. Longer construction timelines may be considered on a case-by-case basis.

During construction, grantees will be required to submit quarterly reports. During Measurement and Verification, no quarterly reports are required.

COMMERCE reserves the right to extend the contract for two one-year periods.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Applicants should familiarize themselves with the requirements prior to submitting an application that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

Apparent Successful Grantee: The Applicant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Application: A formal proposed project submitted in response to this solicitation.

Applicant: Individual or company that submits an application in order to attain a contract with COMMERCE.

COMMERCE or AGENCY: The Department of Commerce is the agency of the state of Washington that is issuing this RFA.

Contractor: Any non-state entity hired by the applicant or grantee to perform work on the proposed project, including but not limited to design, engineering, project management, construction, installation, or demolition.

Cost per Watt: The total project cost, excluding contingency, divided by AC system capacity.

Grantee: Individual or company whose application has been accepted by COMMERCE and is awarded a fully executed, written contract.

Request for Applications (RFA): Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFA is to permit the Applicant community to suggest various approaches to meet the need at a given price.

Simple Payback: The total project cost, excluding contingency, divided by the annual value of energy produced, using a statewide average electricity rate of \$0.08275.

Small Cities and Towns: Projects located in small towns and cities are eligible for a lower match requirement. To qualify, the project must be located within a city or town with a population of 5,000 or less. Commerce will use the Office of Financial Management official population estimates as published on June 1, 2021 to determine population eligibility. Grantees who believe the location of the project qualifies but is not included on this list may provide explanation in the narrative of the project. For more information on the official population estimates: <https://www.ofm.wa.gov/washington-data-research/population-demographics/population-estimates/april-1-official-population-estimates>

Total Project Cost: The total cost of the project except any contingency funds, including but not limited to labor, project management, materials, sales tax, etc.

1.8 ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Applicants may contact the RFA Coordinator to receive this Request for Applications in Braille or on tape.

2 GENERAL INFORMATION FOR APPLICANTS

2.1 RFA COORDINATOR

The RFA Coordinator is the sole point of contact in COMMERCE for this procurement. All communication between the Applicant and COMMERCE upon release of this RFA shall be with the RFA Coordinator, as follows:

Name	Jill Eikenhorst
E-Mail Address	energyretrofits@commerce.wa.gov
Program Website	https://www.commerce.wa.gov/growing-the-economy/energy/solar-grants/
Phone Number	360-522-0000

Applicant questions must be sent by email to the RFA coordinator. Questions and Answers will be posted to the program website periodically through the date listed in [RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#).

Any other communication will be considered unofficial and non-binding on COMMERCE. Applicants are to rely on written statements issued by the RFA Coordinator. *Communication directed to parties other than the RFA Coordinator may result in disqualification of the Applicant.*

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Applications	6/24/2021
Question & answer period	6/24/2021-8/6/2021
Answers to Q&A posted no later than	Periodically, through 8/13/2021
First Pre-Application Virtual Meeting (optional)	7/1/2021, 11am PT
Second Pre-Application Virtual Meeting (optional)	7/14/2021, 2pm PT
Applications due	8/19/2021, 4pm PT
Evaluate applications	8/20/2021-10/22/2021
Announce "Apparent Successful Grantee" and send notification via e-mail to unsuccessful applicants	11/1/2021
Hold debriefing conferences (if requested)	11/2/2021-11/12/2021
Negotiate contract	11/15/2021-1/15/2022
Begin contract work (as soon as)	12/15/2021

COMMERCE reserves the right to revise the above schedule.

2.3 PRE-APPLICATION MEETING

A virtual pre-application meeting is scheduled to be held at the dates and times listed in [RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#). All prospective Applicants are encouraged to attend; however, attendance is not mandatory. Applicants may register for the meeting on the program website.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-application conference or in subsequent communication with the RFA Coordinator will be documented and answered in written form. A copy of the questions and answers will be posted to the program website specified in [RFA SECTION 2.1 RFA COORDINATOR](#), provided the question(s) are received prior to the end of the Question & Answer Period listed in [RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#).

2.4 SUBMISSION OF APPLICATIONS

Applications must be submitted electronically through Zoom Grants. Only electronic applications will be accepted. The application must be received through Zoom Grants no later than the deadline stated in [RFA SECTION 2.2, ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#).

E-mail and e-mail attachments shall not be accepted unless the attachment is too large for the Zoom Grants system. If any attachments are too large to include with the ZoomGrants application then the applicant must:

- Upload a document in place of the attachment stating the issue and that the document will be emailed and from whom the email will come.
- Email the required document to energyretrofits@commerce.wa.gov by the specified application deadline with the Subject line: Solar Application, <Name of the Applicant>, <Name of the Project>, <Document Name>

Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. Application materials attached as zip files will be disqualified.

Applications may not be transmitted using facsimile transmission. Hard copies will not be accepted.

Forms requiring signature must be signed by an individual within the organization authorized to bind the Applicant to the offer. Only scanned color original signed documents will be accepted. Commerce does not accept digital signatures as original signatures.

The application must be submitted by the entity for which a contract would be negotiated should the project be contingently awarded. Applications submitted by a third party, or on behalf of the applicant, will NOT be accepted. ZoomGrants allows the applicant to provide access to a third party to assist with completing the application, if desired.

COMMERCE does not assume responsibility for problems with Applicant's submissions. If ZoomGrants prevents complete and timely submissions, appropriate allowances will be made at COMMERCE'S sole determination.

Applicants should allow sufficient time to ensure timely receipt of the application by the RFA Coordinator. Applicants are highly encouraged to begin the online application early and to submit the application 24 hours ahead of the deadline to allow time to resolve any technical issues. The system can take several minutes to process application submissions, so be sure to allow time for the submission to process before the deadline.

Late applications will not be accepted and will be automatically disqualified from further consideration unless ZoomGrants is found to be at fault at COMMERCE'S sole determination. All applications and any accompanying documentation become the property of COMMERCE and will not be returned.

Application link: <https://www.zoomgrants.com/zgf/Commerce/Solar>

2.5 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Applications submitted in response to this competitive procurement shall become the property of COMMERCE. All applications received shall remain confidential until the Apparent Successful Grantee is announced; thereafter, the applications shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the application that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Applicant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right-hand corner of the page. Marking the entire application exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Applicant has marked as "Proprietary Information," COMMERCE will notify the Applicant of the request and of the date that the records will be released to the requester unless the Applicant obtains a court order enjoining that disclosure. If the Applicant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If an Applicant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFA Coordinator is required. All requests for information should be directed to the RFA Coordinator.

2.6 REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, amendments will be provided via the program website listed in [RFA SECTION 2.1 RFA COORDINATOR](#). Amendments will also be published on Washington's Electronic Bid System (WEBS). The WEBS website can be located at <https://fortress.wa.gov/ga/webs/>. The published questions and answers and any other pertinent information will be placed on the program website listed in [RFA SECTION 2.1 RFA COORDINATOR](#).

COMMERCE also reserves the right to cancel or to reissue the RFA in whole or in part, prior to execution of a contract.

2.7 DIVERSE BUSINESS INCLUSION PLAN

Responders will be required to submit a Diverse Business Inclusion Plan with their application. In accordance with legislative findings and policies set forth in RCW 39.19, the state of Washington encourages participation in all contracts by firms certified by the office of Minority and Women's Business Enterprises (OMWBE), set forth in RCW 43.60A.200 for firms certified by the Washington State Department of Veterans Affairs, and set forth in RCW 39.26.005 for firms that are Washington Small Businesses. Participation may be either on a direct basis or on a subcontractor basis. However, no preference on the basis of participation is included in the evaluation of Diverse Business Inclusion Plans submitted, and no minimum level of minority- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal governmental rules included or referenced in the contract documents will apply.

COMMERCE has the following agency goals:

- 10% participation by Minority Owned Business
- 6% participation by Women Owned Business
- 5% participation by Veteran Owned Business
- 5% participation by Small Businesses

2.8 ACCEPTANCE PERIOD

Applicants must provide 120 days for acceptance by COMMERCE from the due date for receipt of applications.

2.9 COMPLAINT PROCESS

Applicants may submit a complaint to COMMERCE based on any of following:

- a) The solicitation unnecessarily restricts competition;
- b) The solicitation evaluation or scoring process is unfair; or
- c) The solicitation requirements are inadequate or insufficient to prepare a response.

A complaint may be submitted to COMMERCE at any time prior to 5 days before the bid response deadline. The complaint must meet the following requirements:

- a) The complaint must be in writing;
- b) The complaint must be sent to the RFA coordinator in a timely manner;
- c) The complaint should clearly articulate the basis for the complaint; and
- d) The complaint should include a proposed remedy.

The RFA coordinator will respond to the complaint in writing. The response to the complaint and any changes to the solicitation will be posted on WEBS. The Director of COMMERCE will be notified of all complaints and will be provided a copy of COMMERCE'S response. The complaint may not be raised again during the protest period. COMMERCE'S action or inaction in response to the complaint will be final. There will be no appeal process.

2.10 RESPONSIVENESS

All applications will be reviewed by the RFA Coordinator to determine compliance with administrative requirements and instructions specified in this RFA. The Applicant is specifically notified that failure to comply with any part of the RFA may result in rejection of the application as non-responsive.

COMMERCE also reserves the right at its sole discretion to waive minor administrative irregularities.

2.11 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the application submitted. Therefore, the application should be submitted initially on the most favorable terms which the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact an Applicant for clarification of its application.

The Apparent Successful Grantee should be prepared to accept this RFA for incorporation into a contract resulting from this RFA. Contract negotiations may incorporate some, or all, of the Applicant's application. It is understood that the application will become a part of the official procurement file on this matter without obligation to COMMERCE.

2.12 CONTRACT GENERAL TERMS & CONDITIONS

The apparent successful grantees will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit C. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an

attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

2.13 COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Applicant in preparation of an application submitted in response to this RFA, travel to or conduct of a presentation, or any other activities related to responding to this RFA.

2.14 NO OBLIGATION TO CONTRACT

This RFA does not obligate the state of Washington or COMMERCE to contract for services specified herein.

2.15 REJECTION OF APPLICATIONS

COMMERCE reserves the right at its sole discretion to reject any and all applications received without penalty and not to issue a contract as a result of this RFA.

2.6 COMMITMENT OF FUNDS

The Director of COMMERCE or delegate is the only individual who may legally commit COMMERCE to the expenditures of funds for a contract resulting from this RFA. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.16 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful Grantee will be provided a form to complete with the contract to authorize such payment method.

2.17 INSURANCE COVERAGE

The Grantee is to furnish COMMERCE with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth within the contract.

The Grantee shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Grantee shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit C.

3 APPLICATION CONTENTS

Applications must be written in English and submitted electronically through the link provided in 2.4 SUBMISSION OF APPLICATIONS with all attachments appropriately named and included.

All application questions must be completed. Questions will be identified as follows:

- Informational – responses may affect reviewer’s assessment of feasibility and reasonableness, but are not used to calculate scores directly.
- Minimum qualification – responses will be used to ensure they meet the required qualification. Failure to meet the qualification may result in disqualification.
- Scored – responses will be used to calculate the score.

Applicants must answer all required questions in the application, and provide all required documentation. Any required document, in addition to the application, that is not included in the application submission may result in application disqualification.

3.1 APPLICATION CONTENTS

1. Applicant Information
2. Project Information
3. Budget and Funding Sources
4. Required Documents
 - a. Proposals, quotes, or other documentation to support project budget
 - b. Documentation of Energy Production Estimate, either:
 - i. Onsite shading report (e.g. Solmetric SunEye, Solar Pathfinder) AND locational data report and loss assumptions (e.g. PVWatts)
 - ii. OR modeling report (e.g Helioscope, Aurora Solar) including shading analysis, loss assumptions, and locational data equivalent to above
 - c. Qualifications of the person(s) completing energy production estimates
 - d. Project scope for all work to be completed under this grant
 - e. Site plan showing the proposed layout of modules and other key locations
 - f. Site photos (compiled into a single PDF document)
 - g. Equipment list including modules, inverters, and racking with key data (including place of manufacture if using made-in-Washington components). Must include kW ratings of modules (DC) and inverters (AC) to verify system size.
 - h. Utility bill showing most recent year of energy consumption data or, if building does not have a full year of energy consumption data, include all available history and modeling of projected annual energy use. If 2020 data is not representative of typical use, 2019 data may be submitted in addition to more recent data. Include an explanation of why 2020 data is not typical.
 - i. Certifications and Assurances ([Exhibit A](#))
 - j. Diverse Business Inclusion Plan ([Exhibit B](#))
 - k. Contractor Certification (for Executive Order 18-03 – Worker's Rights) ([Exhibit C](#))

4 EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

COMMERCE staff will review the Application to determine whether a) it was properly completed, b) it was submitted on time, and c) it addresses and aligns with the minimum qualifications described in RFA Section 1.3 MINIMUM QUALIFICATIONS. If the application does not meet threshold criteria, it will not be scored.

Responsive Applications will be reviewed and scored by an evaluation panel determined by COMMERCE. Responsive applications will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of applications shall be accomplished by an evaluation team(s), to be designated by COMMERCE, which will determine the ranking of the applications.

The RFA Coordinator may contact the Applicant for clarification of any portion of the Applicant's application.

4.2 EVALUATION WEIGHTING AND SCORING

The following weighting will be assigned to the application for evaluation purposes:

<u>Maximum available points are as follows:</u>	<u>95 points</u>
Simple Payback The total project cost (excluding contingency) divided by the annual value of energy produced, using a statewide average electricity rate of \$0.08275.	30
Leveraging Ratio The amount of match funding provided beyond the minimum requirement (see section 1.3 of this RFA). Other state funds may be considered for this category. Maximum points will be awarded to projects which provide a match of 75% of total project cost or greater. Contingency funds are excluded from the total project cost for the purpose of calculating match.	30
Components Made in Washington State Project uses modules and/or inverters made in Washington state.	10
Cost per Watt The total project cost (excluding contingency) divided by AC system capacity.	10
No Previous Award Applicant has not received funding for solar projects under this program in the past, including awards made under the 2013-15 and the 2015-2017 biennium.	10
Worker's Right Certification Applicants who certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive points (see Attachment C).	5
Grand Total	<u>95 Points</u>

The evaluation team(s) may adjust the applicant's reported energy production estimate, project costs, and other information used to calculate scores if they determine such information is not based on relevant best practices or compliant with this RFA. Energy production estimates that are unable to be verified through provided documentation may be excluded from scoring calculations. The evaluation team(s) may also consider project feasibility, durability and other technical considerations when making final project recommendations.

COMMERCE reserves the right to award the contract to the Applicant whose application is deemed to be in the best interest of COMMERCE and the state of Washington.

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

After evaluating the written applications COMMERCE may elect to schedule oral presentations of the finalists. Should oral presentations become necessary, COMMERCE will contact the top-scoring Applicant(s) from the written evaluation to schedule a date, time, and location. Commitments made by the Applicant at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the apparent successful grantee.

4.4 NOTIFICATION TO APPLICANTS

COMMERCE will notify the Apparently Successful Applicant of their selection in writing upon completion of the evaluation process. Individuals or firms whose applications were not selected for further negotiation or award will be notified separately by e-mail.

4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Any Applicant who has submitted an application and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Unsuccessful Applicant Notification is e-mailed or faxed to the Applicant. Debriefing requests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington, on the third business day following the transmittal of the Unsuccessful Applicant Notification. The debriefing must be scheduled within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm's application;
- Critique of the application based on the evaluation;
- Review of proposer's final score in comparison with other final scores *without* identifying the other firms or reviewing their applications.

Comparisons between applications or evaluations of the other applications will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.6 PROTEST PROCEDURE

Protests may be made only by Applicants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest of the acquisition with the RFA Coordinator. Protests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

Applicants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Applicants under this procurement.

All protests must be in writing, addressed to the RFA Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFA number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of an application, or 2) COMMERCE'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The COMMERCE Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Applicant that also submitted an application, such Applicant will be given an opportunity to submit its views and any relevant information on the protest to the RFA Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S acquisition process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the errors and re-evaluate all applications, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, COMMERCE will enter into a contract with the apparently successful applicant. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

4.7 SUCCESSFUL APPLICANTS

Requirements of Successful Applicants:

- Must complete a Risk Assessment Survey provided by COMMERCE.
- Must maintain good standing with all applicable federal, state, local, and utility laws and requirements, including COMMERCE.
- Will maintain responsibility for the project for the duration of the contract and performance period.
- Is responsible for compliance with the contract for the duration of the performance period.
- Must provide a certification of and maintain insurance as designated in RFA SECTION 2.19 INSURANCE COVERAGE and as stated in the executed contract for the performance period of the contract.
- Must follow all state and/or local procurement requirements that apply.
- Comply with contract, audit, and monitoring requirements, including scheduled site visits.
- Utilize the online invoicing process for reimbursement.
- Must comply with and ensure that all Grantees, Subcontractors, and Partners comply with:
 - All applicable federal, state, local, and utility laws and requirements.
 - The applicable requirements of this Program and any resulting contract.
- Must ensure that all Grantees, Subcontractors, and Partners:
 - Are responsible and qualified Applicants.
 - Are eligible to bid on public works projects (not debarred).
 - Are in and maintain good standing with all applicable federal, state, local, and utility laws and requirements, including from COMMERCE.
- Must accurately and honestly represent the project within the application. COMMERCE reserves the right to revoke awards or terminate contracts inclusive of recuperating funding for projects that were misrepresented or fail to implement the project proposed during application.

Project Requirements:

- The project must report on the first year of energy production and savings, by submitting documentation from a monitoring system and utility bills.
- The project must not begin (be under construction contract) until Commerce received the signed award letter from the Awardee. Costs incurred prior to the award date cannot be reimbursed.
- The construction phase of the project must be completed within 18 months of execution of the grant agreement, however extensions can be granted on a case by case basis.
- Must serve the intended purpose of the contract for the duration of the performance period.
- Project must conduct activities necessary to the deployment of capital assets with a lifespan of greater than 13 years and planned to be located in the State of Washington.
- Capital projects must be planned to cost less than or equal to \$10 million.
- All entities involved must comply with [Washington State Prevailing Wage](#).
- Comply with [Washington State Environmental Policy Act \(SEPA\)](#).
- Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
- Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by Governor's Executive Order 21-02.

Reporting Requirements:

- Report on all pass-through funding using the provided reportable expense template under the [Governor's Diverse Spend Initiative](#).
- Recipients of funding must report to COMMERCE no less than quarterly regarding progress of the funded project, project outcomes upon completion of the project, budget projections, and other information upon request by COMMERCE. Upon project completion, a final summary of the project is required.
- Report energy production and utility costs and usage for one year following system commissioning.

Funding Requirements:

- Funding awarded through this Program cannot supplant or displace any funding designated for the submitted project. If awarded funds will go towards an existing project, the Applicant may be required to provide information concerning the project's funding to demonstrate that funds have not been displaced.

5 RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers' Rights Certification

Exhibit D Sample Service Contract Format with General Terms and Conditions

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the application to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the application are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single application.
3. The attached application is a firm offer for a period of 60 days following receipt, and it may be accepted by COMMERCE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this application, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this application or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this application. All applications become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this application.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Applicant and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Applicant or to any competitor.
7. I/we agree that submission of the attached application constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Applicant to induce any other person or firm to submit or not to submit an application for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others who may have pertinent information regarding the ability of the Applicant and the lead staff person to perform the services contemplated by this RFA.
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (check one):

- are** submitting proposed Contract exceptions. (See RFA Section 2.12, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.
- are not** submitting proposed Contract exceptions (*default if neither are checked*).

On behalf of the Applicant submitting this application, my signature below attests to the accuracy of the above statement as well as my authority to bind the submitting organization.

 Signature of Applicant

 Date

 Printed Name

 Title

DIVERSE BUSINESS INCLUSION PLAN

Do you anticipate using, or is your firm, a State Certified Minority Business?	Y/N
Do you anticipate using, or is your firm, a State Certified Women's Business?	Y/N
Do you anticipate using, or is your firm, a State Certified Veteran Business?	Y/N
Do you anticipate using, or is your firm, a Washington State Small Business?	Y/N

If you answered No to all of the questions above, please explain:

Please list the approximate percentage of work to be accomplished by each group:

Minority	___%
Women	___%
Veteran	___%
Small Business	___%

Please identify the person in your organization who will manage your Diverse Inclusion Plan responsibility:

Name: _____
Phone: _____
E-Mail: _____

SAMPLE CONTRACT TERMS AND CONDITIONS**PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT**

As identified herein, notwithstanding General Terms and Conditions Sections, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

1. COPYRIGHT (REPLACES GENERAL TERMS AND CONDITIONS #13)

For Materials (including Reports and Documents) that are delivered under the Contract, but that incorporate pre-existing materials or are required for the completion of the Scope of Work or are produced for reporting and compliance purposes, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this Contract. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

2. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #37)

The Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

3. TREATMENT OF ASSETS (REPLACES GENERAL TERMS SECTION #43)

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to Grantee for use in Grantee's performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce. Commerce claims no ownership for the materials, goods, or services purchased by the Grantee for the completion of this Contract, regardless of reimbursement status under this contract.

- A. Any property of Commerce furnished to the Grantee shall, unless otherwise provided herein or approved by Commerce, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of Commerce that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any Commerce property is lost, destroyed or damaged, the Grantee shall immediately notify Commerce and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or subcontractors.

4. USE OF STATE CAPITAL FUNDS

This grant is made with State Capital Funds. As such, the Grantee agrees to follow and to ensure that all subcontractors follow the requirements associated with state capital dollars, including but not limited to:

- A. Washington State Prevailing Wage
- B. Washington State Public Works requirements
- C. State Cultural and Historic Resource requirements and Tribal consultation as required by Governor's Executive Order 21-02
- D. Comply with Washington State Environmental Policy Act (SEPA)
- E. Report on all pass-through funding using the provided reportable expense template under the Governor's Diverse Spend Initiative

5. 2021 SOLAR GRANT REQUIREMENTS

Grantee agrees to comply with the requirements and follow the guidelines as outlined in the Request for Applications dated June 2021 (the "RFA"), incorporated by this reference as if fully set forth herein. In the event of conflict between the RFA and the contract, the Contract prevails.

6. REPORTING REQUIREMENTS

During the construction phase of the Scope of Work, the Grantee must provide quarterly written reports to Commerce for project update purposes. Quarterly reports are due no later than 15 days after the end of each quarter or at the time of invoice for the quarter to be reported. The report form will be provided by Commerce. The intent is to collect a description of the project activity that occurred during the period, including but not limited to:

- A. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
- B. The project milestones met to date and anticipated in the subsequent quarter;
- C. Any additional metrics required from the capital budget proviso, legislature, governor's office, or Commerce;
- D. Quarterly updated budget projections for project expenditures;
- E. The grant expenditures to date and anticipated in the next quarter.

SPECIAL TERMS AND CONDITIONS

1. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed Award Amount for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the schedule set forth in attached Budget.

3. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE nor more than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

4. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

5. HISTORICAL OR CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, Grantee shall complete the requirements of Governor's Executive Order 21-02, where applicable, or Grantee shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Grantee agrees that the Grantee is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources s discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Grantee shall, in accordance with Governor's Executive Order 21-02, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any Tribal cultural resources affected by Project. Grantee agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Grantee agrees that, unless the Grantee is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Grantee shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Grantee shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Grantee agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the Grantee finds it necessary to amend the Scope of Work the Grantee may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

6. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subcontractor, or agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be

primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

7. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Attachment C – Proviso
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Request for Applications

GENERAL TERMS AND CONDITIONS, STATE FUNDS

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Contract under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys' fees and costs.

9. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Energy Retrofits for Public Buildings Program including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

13. COPYRIGHT (Replaced by Program-Specific Terms and Conditions #1)

~~Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.~~

~~"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.~~

~~For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Grantee hereby grants to COMMERCE a nonexclusive, royalty free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.~~

~~The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.~~

14. DISALLOWED COSTS

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Contract number; and

- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

16. DUPLICATE PAYMENT

The Grantee certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

17. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

The Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Grantee's or any subcontractor's performance or failure to perform the contract. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Contract. The Grantee and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

20. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

21. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

22. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

24. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Grantee shall participate in local public transportation forums and implement strategies designed to ensure access to services.

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

26. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

27. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

28. PREVAILING WAGE LAW

The Grantee certifies that all grantees and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided,

however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

30. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

31. RECAPTURE

In the event that the Grantee fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

32. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Grantee shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

34. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Grantee shall provide access to its facilities for this purpose.

35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

36. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

37. SUBCONTRACTING (Replaced by Program-Specific Terms and Conditions #2)

~~The Grantee may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

40. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

42. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee under the orders and subcontracts so terminated, in which case

COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

43. TREATMENT OF ASSETS (Replaced by Program-Specific Terms and Conditions #3)

~~Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.~~

- ~~A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.~~
- ~~B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.~~
- ~~C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.~~
- ~~D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract~~

~~All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.~~

44. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT A – SCOPE OF WORK

Insert contract specific summary here

Specific tasks <<Contractor Name>> will undertake are described below:

ATTACHMENT B - BUDGET

<<Enter Budget Here>>

ATTACHMENT C – BUDGET PROVISIO LANGUAGE

Enacted 2020 supplemental budget ESSB 6248, Section 1023, Subsection 2

15 (2) \$3,573,000 is provided solely for grants to be awarded in
16 competitive rounds to local agencies, public higher education
17 institutions, school districts, federally recognized tribal
18 governments, and state agencies for projects that involve the
19 purchase and installation of solar energy systems, including solar
20 modules and inverters, with a preference for products manufactured in
21 Washington.